

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

Docket No. 11-512

6 FRANK PEAKE,

San Juan, Puerto Rico

January 14, 2013

7 Defendant.

8
9 JURY TRIAL EXCERPT

10 BEFORE THE HONORABLE JUDGE DANIEL R. DOMINGUEZ,

11 UNITED STATES DISTRICT JUDGE, and a jury.

12
13 APPEARANCES:

14 For the Government:

Mr. Brent Snyder, AUSA

Mr. Craig Lee, AUSA

15 Mr. Michael Whitlock, AUSA

16 Ms. Heather Tewksbury, AUSA

17 For the Defendant:

18 Mr. David Markus, Esq.

Ms. A. Margot Moss, Esq.

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24 Proceedings recorded by stenography. Transcript produced by
25 CAT.

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I N D E X

WITNESSES:	PAGE
None offered.	
EXHIBITS:	
None offered.	

San Juan, Puerto Rico

January 14, 2013

At or about 9:30 AM

* * *

(Whereupon, the following proceedings were held in open Court outside the presence of the jury.)

THE COURT: Please call the case.

THE CLERK: Criminal case 11-512, United States of America versus Frank Peake. Case called for jury trial.

Appearing on behalf of the United States, trial attorneys Brent Snyder, Craig Lee, Heather Tewksbury and Michael Whitlock. Appearing on behalf of the defendant, A. Margot Moss and Oscar Markus.

The defendant is present in Court.

THE COURT: Okay. United States and defense, the Court has determined that I will give an instruction with intent. However, intent may be proven per se, illegal activities of price fixing, and that I took from the Nipon case. That is at page 10, footnote 11. The definition of knowingly means that the act was done voluntarily and intentionally, and not because of mistake or accident. The United States vs. Nipon Paper Industry says that intent need not be shown -- from the First Circuit, intent need not be shown to prosecute criminal conduct as per se illegal violations because of unquestionably anti-competitive defense.

1 Defendants can be convicted of participation in a price fixing
2 conspiracy without any demonstration of specific criminal
3 intent to violate antitrust laws.

4 That is a First Circuit Court decision, which I am
5 bound to follow. So, now, they don't find a per se price
6 fixing, well, then, it has to be with intent. If that
7 happens, I think you are going to get an absolution.

8 Anything further that I have to decide?

9 MR. MARKUS: Can we preserve our objection throughout
10 the trial to that instruction?

11 THE COURT: What I will do is I will advise the jury
12 that these are preliminary instructions, and they may change.
13 If you find any case that reverses Nipon Paper Industries,
14 because I am bound by First Circuit law, as you know, I will
15 gladly change the instruction at the end of the case.

16 MR. MARKUS: There is one other issue with the case.
17 We have been speaking with the prosecution about opening
18 charts, what can be used and what can't be used.

19 THE COURT: Good. So I don't have to guide anything.

20 MR. MARKUS: Only the issue is the prosecutor plans
21 on generally discussing Mr. Peake's compensation and Sea
22 Star's profit and loss numbers. I don't want to interrupt his
23 opening, so I would just ask the Court if I can object now to
24 those statements. And I don't know if the Court wants to take
25 that up now or not.

1 THE COURT: What is the connection?

2 MR. SNYDER: Well, Your Honor, this is a financial
3 crime. And in financial crimes, profit and pecuniary gain is
4 the motive.

5 So, fundamentally, the jury has a right to know why
6 these companies and why this individual engaged in this
7 conspiracy. And the simple answer is Sea Star wanted profits,
8 and Mr. Peake, whose bonuses were tied to the profits of the
9 company, wanted bigger bonuses. That is about what I intend
10 to say in opening. But it does raise a bigger picture.

11 THE COURT: I will allow that, so the defense can
12 voice its objection now and does not have to follow up on it.

13 MR. MARKUS: Just so the record is clear, we object
14 on 401 and 403. And we object to the Court's ruling that we
15 were not allowed to discuss Mr. Peake's finances. And I think
16 that should cut both ways.

17 THE COURT: Yes, so that opens up the door.

18 MR. MARKUS: Thank you, Your Honor.

19 THE COURT: So I think you may discuss Mr. Peake's
20 finances.

21 MR. MARKUS: Thank you.

22 THE COURT: That is a reversal of a prior
23 determination of the Court. All right. Bring in the jury.

24 MR. MARKUS: Your Honor, just before the jury comes
25 in, Ms. Moss.

1 MS. MOSS: We are invoking the rule of witnesses who
2 are present for sequestration for trial.

3 THE COURT: All the witness of the United States must
4 leave before opening statements.

5 MR. SNYDER: I guess the courtroom has to be cleared.

6 THE COURT: That is a quid pro quo.

7 MR. MARKUS: The witness' lawyer is here. We would
8 request that he not discuss the openings with the witness.

9 THE COURT: Fine. Do we have all the members of the
10 family of Mr. Peake that wish to enter into the courtroom?

11 MR. MARKUS: Yes, Your Honor.

12 THE COURT: Because that dog has bit here a few
13 judges.

14 MR. MARKUS: Yes.

15 THE COURT: Okay. Very well. So we are ready to go.
16 Let's bring in the jury.

17 So one of your objections has now become moot,
18 because I have now authorized you to discuss his finances.

19 MR. MARKUS: I still think we have 401 and 403
20 objections, Your Honor.

21 THE COURT: Well, 401 and 403 objections I will
22 handle when they come in.

23 MR. MARKUS: Then I would ask that Mr. Snyder not
24 discuss them in his opening.

25 THE DEPUTY MARSHAL: All rise for the jury.

1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: Thank you for your promptness.

3 All right, ladies and gentlemen.

4 We have to swear them in, Mr. Flaquer. They have not
5 been sworn in.

6 THE CLERK: Yes, Judge.

7 THE COURT: Please rise.

8 (Whereupon, the jury panel was sworn in.)

9 THE COURT: All right. Members of the jury, now that
10 you have been sworn, I will provide you some preliminary
11 instructions to guide you in your participation in the trial.

12 Your duty. It will be your duty to find from the
13 evidence what the facts are. You and you alone are the judges
14 of the facts. You will then have to apply to those facts the
15 law as the Court will provide it to you.

16 You must follow the law whether you agree with it or
17 not. Nothing the Court may say or do during the course of the
18 trial is intended to indicate, nor should be taken by you as
19 indicating what your verdict should be.

20 So it is immaterial what you think that the Court may
21 be thinking about the case, because it is your decision and
22 not the Court's decision.

23 Evidence. The evidence from which you will find the
24 facts will consist of the testimony of the witnesses, the
25 documents and other things received into the record as

1 exhibits, and any facts that the lawyers may stipulate to or
2 the Court may instruct you to find.

3 Certain things are not evidence and must not be
4 considered by you. I will list them now for you. One,
5 statements, arguments and questions by lawyers are not
6 evidence. The evidence is the answer, not the question.

7 Objections to questions are not evidence. Lawyers
8 have an obligation to their clients to make an objection when
9 they believe evidence being offered is improper under the
10 Rules of Evidence. You should not be influenced by objections
11 or by the Court's ruling on it.

12 If the objection is sustained, ignore the question.
13 If it is overruled, treat the answer like any other. If you
14 are instructed that some item of evidence is received for a
15 limited purpose only, you must follow that instruction.

16 Testimony that the Court has excluded or told you to
17 disregard is not evidence and must not be considered by you.

18 Four, anything you may have seen or heard outside the
19 courtroom is not evidence and must be disregarded. You are to
20 decide the case solely on the evidence presented here in the
21 courtroom.

22 There are two kinds of evidence, direct and
23 circumstantial. Direct evidence is direct proof of a fact,
24 such as the testimony of an eye witness. Circumstantial
25 evidence is proof of facts from which you may infer or

1 conclude that other facts exist. I will provide you further
2 instructions on these as well as other matters at the end of
3 the case, but have in mind that you may consider both types of
4 evidence.

5 It will be up to you to decide which witnesses to
6 believe, which witnesses not to believe, and how much of any
7 witness' testimony to accept or reject.

8 I will stop here. Every witness that sits in that
9 stand, you can at the end of the case accept it in total,
10 reject it in total, or believe some and not believe others.
11 So there are three choices with each witness, but that is
12 weighing and that is also credibility. Credibility and
13 weighing is done at the end of the case, not as each witness
14 sits on the stand. It is at the end of the case when you
15 weigh the evidence and you make credibility determinations
16 based on two potentially contradictory statements. I will
17 give some guidelines for determining the credibility of
18 witnesses at the end of the case.

19 Rules for a criminal case. As you know, this is a
20 criminal case. There are three basic rules about a criminal
21 case that you must keep in mind. You all told me that you
22 accepted these three critical instructions.

23 First, the defendant is presumed innocent until
24 proven guilty. The Indictment against the defendant brought
25 by the government is only an accusation. Nothing more. It is

1 not proof of guilt or anything else. The defendant,
2 therefore, starts out with a clean slate.

3 Second, the burden of proof is on the government
4 until the very end of the case. The defendant has no burden
5 to prove his innocence or to present any evidence or to
6 testify. Since the defendant has the right to remain silent,
7 the law prohibits you in arriving at your verdict from
8 considering that the defendant may not have testified or that
9 the defendant did not provide any proof.

10 Third, the government must prove the defendant's
11 guilt beyond a reasonable doubt. I will give you further
12 instructions on this point later, but bear in mind that in
13 this respect a criminal case is different from a civil case.
14 Those of you who have had civil cases, the evidence that you
15 are weighing is on which side of the balance do you think the
16 case falls. Well, here it is not that. Here it is proof
17 beyond a reasonable doubt.

18 In this case, the defendant is charged with a
19 violation of antitrust law. It is the Sherman Act, and it is
20 alleged that he and others incurred in a conspiracy to set
21 prices and fuel surcharges.

22 Is that right, United States?

23 MR. SNYDER: Yes, Your Honor.

24 THE COURT: Okay. Now, as I said before, the fact
25 that there is an Indictment does not mean anything. It only

1 means that it is a way of charging somebody.

2 Now, the elements of the offense. In order to
3 establish the offense of conspiracy, and conspiracy is nothing
4 more than a plan to violate a law by two or more persons, the
5 crime is the plan. And the law, the underlying law is the
6 antitrust law. Now, the government must prove each of the
7 elements beyond a reasonable doubt. One, the conspiracy
8 described in the Indictment existed at or about the time
9 alleged. The defendant acted knowingly and intentionally,
10 because he became a member of the conspiracy. And the
11 conspiracy described in the Indictment either affected
12 interstate commerce in goods or services or occurred within
13 the flow of interstate commerce in goods or services.

14 The First Circuit has stated that the definition of
15 knowingly, knowingly means that the act was done voluntarily
16 and intentionally, and not because of mistake or accident.
17 Intent need not be shown to show criminal conduct per se of
18 illegal violations, because of its unquestionably
19 anti-competitive effects.

20 Now, the fact that I am reading this instruction to
21 you does not at all mean that the defendant is already
22 responsible. If you find from your consideration of all the
23 evidence that each of these elements has been proven beyond a
24 reasonable doubt, then you should find the defendant guilty.
25 If, on the other hand, you find from your consideration of the

1 evidence that all these other elements have not been proven
2 beyond a reasonable doubt, then you should find the defendant
3 not guilty.

4 Now, this is a conspiracy. The type of relationship
5 condemned by the Sherman Act as a conspiracy is often
6 described as a partnership in crime in which each person, a
7 member of the conspiracy, is found to be a member thereof, is
8 liable for all acts and statements of other members made
9 during the existence and in furtherance of the conspiracy.

10 In order to establish the existence of a conspiracy,
11 the evidence need not show that the members of the conspiracy
12 entered into any express, written or formal agreement or they
13 met together or they directly stated what their object or
14 purpose was or the details of it or the means by which the
15 object was to be accomplished. The agreement itself may have
16 been entirely unspoken. Direct proof of a conspiracy may not
17 be available. A conspiracy may, however, be disclosed by the
18 circumstances or by the acts of its members.

19 Now, in determining whether a conspiracy has been
20 proven, you must view the evidence as a whole and not by
21 piecemeal. You should consider the actions and statements of
22 all the alleged conspirators.

23 The Sherman Act makes unlawful certain agreements
24 which because of their harmful effect on the competition and
25 lack of redeeming virtue are conclusively presumed to be an

1 unreasonable restraint on trade and are always illegal without
2 inquiry about the precise harm that they have caused or the
3 business use. Included in this category of unlawful
4 agreements are agreements to fix prices.

5 I will be providing you more detailed evidence,
6 more detailed instructions that will supersede these
7 instructions. These instructions are merely for you to be
8 acquainted with the facts that you are going to be hearing so
9 that can enable you to follow the case as it is going on.

10 All right. Conduct of you, the jury. Now, a few
11 words about your conduct as jurors. First, I instruct you
12 that during the trial you are not to discuss the case with
13 anyone or permit anyone to discuss it with you. Until you
14 retire to the jury room at the end of the case to deliberate
15 on your verdict, you simply are not to talk about the case.

16 Second, do not read or listen to anything touching
17 upon this case in any way. Particularly, do not go to the
18 internet and try to outfox the judge. The instructions that
19 the Judge will give you will probably be instructions that
20 both sides agree. So don't try to do research on anything
21 relating to this case.

22 Third, do not try to do any research or make any
23 investigation on the case on your own.

24 Finally, do not form any opinion until all the
25 evidence is in. Keep an open mind until you start your

1 deliberations at the end of the case.

2 If you wish, you may take notes, but, if you do,
3 leave them in the jury room when you leave at night. And
4 remember, most critical, that they are for your own personal
5 use. They are not to be given or read to anyone else.

6 Course of the trial. The trial will now begin.
7 First, the government, who has that burden of proof
8 throughout, will make an opening statement, which is simply an
9 outline, like a road map to help you determine the evidence as
10 it comes in.

11 Next the defendant's attorney may but does not have
12 to make an opening statement. He can reserve his opening
13 statement until the government presents all of its case.
14 Opening statements are neither evidence nor arguments.

15 The government then will present its witnesses, and
16 then counsel for the defendant may cross-examine them.
17 Following the Government's case, the defendant may, if he
18 wishes, present witnesses whom the government may
19 cross-examine.

20 After all the evidence is in, the attorneys will
21 present their closing arguments to summarize and interpret the
22 evidence for you, and the Court will instruct you on the law.
23 After that, you will retire to deliberate on your verdict.

24 Now, two additional matters to clarify to you.
25 Number one, you will see that we hold sidebars. Sidebars are

1 discussions on the law. We don't want you to hear arguments
2 on the law, because that may taint you. You will receive the
3 law at the end of the case. So the purpose of a sidebar is
4 not to hide anything from you, but to avoid contamination by
5 the jury on hearing arguments as to the law. They sometimes
6 may become so long that I may request that you go to the jury
7 room.

8 Second, a criminal trial is adversarial in nature.
9 You see the lady and the gentleman. They are going to defend
10 this case like tigers. Now, you see the two gentleman and the
11 lady over there. They are going to prosecute like lions. So
12 it may get hot. It is my job to open the refrigerator and
13 cool the atmosphere. But if I have to admonish either side,
14 don't take it against their respective clients. These matters
15 occur in an adversarial process. It is my job to keep it down
16 to the minimum and to watch that they don't overstep their
17 bounds.

18 Thank you. At this time the United States -- no. I
19 would appreciate counsel to come forward.

20 (Whereupon, a bench conference was held with all
21 defense counsel and counsel for the government.)

22 THE COURT: Any objections to the instructions?

23 MR. MARKUS: Your Honor, yes, with the previously
24 filed instruction. I didn't know you were going to get into
25 the purpose of the Sherman Act and these sorts of things, and

1 we object to that portion of the instructions. I think it is
2 not a complete statement. I think it sort of taints the jury
3 as to how bad that is. So I object to that, Your Honor.

4 THE COURT: You want me to read the entire thing?

5 MR. MARKUS: I would prefer that you not read it at
6 all. I would state that, since you add that, you read the
7 mere presence portion of the instruction, because that portion
8 is relevant to our defense.

9 THE COURT: What else do you want me to read?

10 MR. MARKUS: That is it, Your Honor.

11 THE COURT: Mere presence.

12 MR. MARKUS: I am not sure if it is in the
13 Government's proposed, because they proposed all kinds of
14 instructions that we were going to object to -- it is in the
15 standard conspiracy instruction, Your Honor, that you have in
16 your charge there, I am sure.

17 THE COURT: Okay.

18 MR. SNYDER: Those are the amended instructions from
19 the United States. There should be an index in the front.

20 THE COURT: Okay.

21 MR. MARKUS: Your Honor, we are talking about the
22 instruction that just says, you know --

23 THE COURT: If the person is merely present --

24 MR. MARKUS: At a meeting or something like that.

25 THE COURT: -- at a meeting with no intent whatsoever

1 --

2 MR. MARKUS: Exactly.

3 THE COURT: -- that does not constitute a violation
4 of the law. Where is it?

5 MR. SNYDER: I was just looking here.

6 MR. MARKUS: Your Honor, it is the rest of this
7 paragraph. You read the first couple of lines.

8 THE COURT: All right.

9 MR. MARKUS: Thank you.

10 (End of bench conference.)

11 THE COURT: Relating to the conspiracy, mere
12 similarity of conduct among various persons, however, or the
13 fact that they may have associated with one another or may
14 have met or assembled together and discussed common aims and
15 interests, does not necessarily establish an existence of a
16 conspiracy. If actions were taken independently by them
17 solely as a matter of individual business judgment without any
18 agreement or mutual understanding among them, then there would
19 not be a conspiracy.

20 All right. So the case now begins and the United
21 States is to present its opening statement.

22 MR. SNYDER: Your Honor, we will be displaying some
23 things on the monitor. So if the jurors in the back row have
24 monitors, if the jurors in the back row have monitors on the
25 side --

1 MR. SNYDER: May it please the Court.

2 THE COURT: You may.

3 OPENING STATEMENT

4 MR. SNYDER: Ladies and gentlemen, shipping is very
5 important in Puerto Rico. As we all know, the only practical
6 way to get things to and from the island is by water. So most
7 consumer goods travel from Puerto Rico to the shipping lanes
8 from Jacksonville, Florida, Elizabeth, New Jersey.

9 THE COURT: I am seeing it clearly. There it is.

10 MR. SNYDER: Okay. There we go. Most consumer goods
11 travel to Puerto Rico from the shipping lane of Jacksonville,
12 Florida, Elizabeth, New Jersey and Houston, Texas. Food for
13 Pueblo Supermarket, medicine at Walgreens, most things at
14 Walmart, most things made in Puerto Rico for sale in the
15 states travel through those same shipping lanes, things like
16 pharmaceuticals, electronics and rum.

17 Because of U.S. shipping laws, only four companies
18 sail freight through those shipping lanes. Two of those
19 companies sail freight by ship. They are Sea Star Lines and
20 Horizon Lines. And two other companies sail freight by barge.
21 They are Crowley Liner and Trailerbridge.

22 THE COURT: Explain what a barge is, please.

23 MR. SNYDER: A barge is essentially a floating
24 platform pulled by a tug boat. They are a little slower than
25 the ships which sail under their own steam.

1 We are here today because the two companies that sail
2 freight by ship, Sea Star and Horizon, reached secret
3 agreements about the prices they charged. Simply put, Sea
4 Star and Horizon illegally agreed, they conspired to charge
5 higher and higher rates for freight they sailed to Puerto
6 Rico.

7 Let me pause for a minute and explain that Sea Star
8 and Horizon carried most of the freight moving through Puerto
9 Rico shipping lanes, and they took advantage of their position
10 by fixing the rates they charged their customers to ship
11 freight to and from Puerto Rico. Sea Star and Horizon were
12 run by people who were responsible for participating in this
13 conspiracy. And the defendant, Frank Peake, he was a key
14 executive at Sea Star. In fact, he was the president of the
15 company. And the evidence will show in this case that not
16 only did Frank Peake know about the conspiracy, and not put a
17 stop to it, like the president could and should, but he even
18 joined the conspiracy.

19 He was involved in reaching illegal pricing
20 agreements with Horizon. And sometimes when things didn't go
21 according to plan, he became a problem solver for the company.
22 He was the president, and he used his position to keep the
23 conspiracy working, to keep it on track. He allowed his
24 employees to participate in the conspiracy. And he worked to
25 make the conspiracy a success. And that is why he is on trial

1 here today.

2 Why did he do it? You will hear that Mr. Peake and
3 his company, Sea Star made a lot of money. It was so
4 significant that it affected billions of dollars of freight to
5 and from Puerto Rico. Billions of dollars. This case is
6 about Puerto Rico, because the conspiracy affected so much of
7 what is sold here and what is exported from here.

8 I want to take a second to reintroduce myself. I am
9 Brent Snyder, and here today with me is my colleague, Craig
10 Lee. And also I am joined by Jaime Amhrein, who is helping me
11 out today. You will see another colleague here in Court. His
12 name is Michael Whitlock. We all represent the United States.
13 We are from the Department of Justice, and it is our job to
14 make sure that prices in the marketplace are set free from
15 unfair competition. That is because competition benefits
16 consumers.

17 You have already heard Judge Dominguez give you an
18 instruction about price fixing under the Sherman Act.
19 Congress passed the Sherman Act because it was so concerned
20 that consumers need to buy things to feed and clothe their
21 families. The Sherman Act makes it a crime for the sellers of
22 products, for competitors to get together and reach agreements
23 on the prices they charge for their products. It requires
24 businesses to compete, not to conspire. That way customers
25 get the best price.

1 It is important, because it is pretty much impossible
2 to live without spending money. We all have to buy things,
3 whether it is a cup of coffee at work, a sandwich at lunch,
4 another cup of coffee in the afternoon, maybe some groceries
5 for dinner. Because people have to spend money, they try to
6 get the best price for what they buy, especially in times when
7 money is tight, and businesses know that. That is why
8 businesses advertise sales, to try to get people into their
9 stores. They try to offer the best price. They try to offer
10 a competitive price, because they want people to spend their
11 hard-earned money with them.

12 You heard that's how prices are supposed to be set,
13 by competition between the sellers of things that people buy.
14 Without competition, sellers can raise the prices. Without
15 competition, there are no great deals on prices like Best Buy
16 and the like. For customers, making ends meet often depends
17 on getting the best prices. Unfortunately, the customers that
18 ship freight to and from Puerto Rico between at least 2005 and
19 2008 were not getting the benefits of price competition from
20 the shipping companies. You will hear instead that they were
21 the victims of price fixing, and they were paying more because
22 of it. Businesses like Burger King, Office Max and Walgreens,
23 businesses that have stores all over Puerto Rico, they were
24 all paying more than they should have to ship freight to
25 Puerto Rico because Sea Star and Horizon were conspiring, not

1 competing.

2 As you heard from Judge Dominguez this morning, to
3 prove that Frank Peake committed the crime of price fixing,
4 the government has to prove three things. First, the
5 government has to prove that there was a conspiracy to fix
6 shipping lanes. Second, that Frank Peake knowingly and
7 intentionally joined that conspiracy. And, third, that that
8 conspiracy affected interstate commerce.

9 I want to talk very briefly about that third thing,
10 interstate commerce. The evidence will show that this
11 conspiracy affected interstate commerce because shipping
12 freight between parts of the United States like Florida and
13 the Commonwealth of Puerto Rico is interstate commerce. So
14 most of what you are going to hear and see at the trial during
15 the course of trial is going to focus on the first two things:
16 Whether there was a conspiracy, and whether Frank Peake joined
17 it.

18 You are going to hear about both of those things
19 during the course of the trial from actual conspirators,
20 people who engaged in the price fixing conspiracy, some people
21 who reported directly to Frank Peake. They are going to tell
22 you that Sea Star and Horizon, the companies that moved
23 freight by ship, agreed to start raising shipping rates. They
24 could increase their prices and increase their profits.

25 The conspirators actually got a third company

1 involved, Crowley Liner, because they were worried about
2 losing too much freight to that carrier if Crowley Liner was
3 too much cheaper. Those three shipping companies could gather
4 and ship about 85 percent of the freight that moves to and
5 from Puerto Rico.

6 The witnesses are going to tell you not only how this
7 conspiracy got started, how it worked, but they will also tell
8 you about Frank Peake's involvement and how he was involved in
9 it right until April of 2008 when the F.B.I. broke it up.
10 Now, under that conspiracy, it is important to get a sense of
11 how it worked. Large customers negotiate yearly contracts
12 with the shipping companies to get their goods to Puerto Rico,
13 and when a contract comes up for renegotiation each year, they
14 typically ask at least two of the shipping companies to submit
15 pricing proposals. They do that because they want to create
16 competition. They want to try to get the best price.

17 Let's use Office Max as an example. Office Max sells
18 school supplies as well as high end items like cameras and
19 printers in the Puerto Rico stores. Office Max, as you will
20 see in trial, authorized Sea Star and Horizon to submitted
21 bids. Office Max wanted them to compete for its business by
22 offering the best possible prices. But instead of doing what
23 Office Max hoped, what any customer would expect, instead of
24 competing for Office Max's business, Sea Star and Horizon did
25 not compete. They conspired.

1 Before submitting any pricing proposal to Office Max,
2 Sea Star and Horizon communicated by e-mail, phone, or face to
3 face about who should win the contract, how much to increase
4 the price, and how much each of them would bid to Office Max.
5 And it wasn't just one price they were negotiating over.
6 There were a number of different costs associated with
7 shipping freight, and here each and every price that they
8 quoted to Office Max was fixed, the ocean shipping rate, the
9 rate for trucking to and from the port, and the fuel
10 surcharges for shipping and the trucking.

11 Let's look at an example real quickly. Sea Star and
12 Horizon communicated about Office Max through a secret e-mail
13 account using code names. Lighthouse123 is a Sea Star
14 executive. And you will see in here that he e-mailed his
15 counterpart in Horizon about Office Max. He asked if Horizon
16 had finalized its negotiations with Office Max, and if so,
17 what rate level.

18 In response, the Horizon executive wrote back using a
19 code name, Anne Clark. You will hear Anne Clark is not a
20 woman. It is a man really trying to cover his tracks. He
21 wrote back to Lighthouse123 at Sea Star about Office Max. He
22 wrote, if you continue to stay clear, I am confident that they
23 will agree to our last offer. Then he goes on to say, stay a
24 couple of hundred dollars away, because they will drag this
25 into the mud if we go head to head on this, if we compete on

1 | this.

2 | After communicating with each other, Sea Star and
3 | Horizon then submitted the agreed upon pricing proposals to
4 | Office Max. The end result of the negotiations was that the
5 | shipping companies controlled who won the contracts. They
6 | increased the rates each year. You heard that's what happened
7 | with Office Max and with other victims of the conspiracy.

8 | Horizon was able to raise its rates and win Office
9 | Max's business, because Sea Star agreed to stay clear of
10 | Horizon's prices. Sea Star did that to let Horizon win the
11 | Office Max business. And Horizon's rates to Office Max, they
12 | went up each year. Why was Sea Star willing to let Horizon
13 | win the Office Max business? You will hear that Sea Star let
14 | Horizon win because it knew that Horizon was going to return
15 | the favor on other contracts.

16 | You will hear from a witness named Gabriel Lafitte
17 | from Caribbean Restaurants who owns all the Burger Kings in
18 | Puerto Rico. He will tell you that the shipping costs are
19 | factored into the costs of the whoppers sold at Burger King.
20 | Like Office Max, Burger King asked Sea Star to submit bids to
21 | try to compete for its business, to try to get them to compete
22 | for its business. Well, you will hear that what Burger King
23 | got was a conspiracy, Sea Star and Horizon agreeing on their
24 | rate proposals to Burger King, and Burger King ended up paying
25 | more to ship everything it needs to make its whoppers.

1 You will hear how they took advantage of victims of
2 the conspiracy. They were just trying to get shipping
3 companies to compete by offering them the best prices, the
4 best deals. The victims never knew why, but they did know
5 that they were paying more and more and more for their
6 shipping each year. That is exactly what the shipping
7 companies were trying to get them to do.

8 You will hear the victims like Burger King and Office
9 Max, those big price increases, one of the options was they
10 passed that pricing on. That hurt their ability to compete by
11 offering lower prices for their products. The other option
12 was to go ahead and eat the price increases themselves in
13 their profitability.

14 The conspiracy didn't just affect business. It also
15 affected the federal government. The federal government used
16 these shipping companies to ship freight to Puerto Rico.
17 For instance, there will be evidence that the government used
18 the shipping companies to ship food for the school lunch
19 program. The federal program gives free and reduced price
20 lunches to families who can't afford to pay for their lunches.
21 You will hear from the Department of Agriculture, USDA, which
22 will tell you that paying more for shipping meant that the
23 government had less money in the school luncheon program to
24 buy food for school children.

25 The evidence will show that the conspirators were not

1 concerned about the effect the conspiracy had. They wanted
2 higher prices. And they knew they were breaking the law, and
3 they took steps to cover their tracks. They held secret
4 meetings to avoid getting caught. You will see evidence of
5 hundreds of cell phone calls between people who were supposed
6 to be competitors. You will see that they used secret e-mail
7 accounts and code names like you saw in the Office Max
8 example. Those e-mails you will hear were not supposed to see
9 the light of day.

10 You will also hear that they tried to destroy that
11 evidence when they found out that their scheme was discovered.
12 You will see and hear evidence that Frank Peake joined and
13 participated in this conspiracy. Most of that evidence at
14 trial will come and focus on four individuals, two at Sea Star
15 and two at Horizon. The first two are Peter Baci and Greg
16 Glova. Mr. Baci was the senior vice president of Sea Star who
17 had the day-to-day responsibility for setting Sea Star's
18 rates. He was Frank Peake's direct report and righthand man
19 on pricing. He goes by Lighthouse123 in the secret e-mail
20 account. You saw one of his e-mails in the Office Max example
21 I showed you a couple of minutes ago.

22 The other person, Greg Glova, was Peter Baci's
23 counterpart at Horizon. And he had day-to-day responsibility
24 for setting Horizon's Puerto Rico rates. He was Anne Clark in
25 the secret e-mail exchange in the Office Max example. And you

1 will hear how he ended up with that code name. And they had
2 secret meetings. You will hear Peter Baci and Greg Glova
3 admit that they communicated constantly to reach agreements
4 about prices that they would offer customers.

5 The great majority of e-mail agreements in this
6 conspiracy were reached between Peter Baci and Greg Glova,
7 because their job was to set the rates that their companies
8 charged for Puerto Rico freight shipments. You will also hear
9 that their agreement generally worked well, and they succeeded
10 in raising rates for their services. They raised the rates
11 that the customers had to pay to ship freight to and from
12 Puerto Rico. Office Max is an example of how it was supposed
13 to work, because that is what happened most of the time.

14 However, you will hear that sometimes disputes arose
15 between them, or they didn't see eye to eye, or when mistakes
16 occurred, that is when their bosses got involved. Greg
17 Glova's boss was named Gabriel Serra. Let me first apologize,
18 because I know I am not saying his last name properly. I am
19 Norwegian. I grew up in Montana. My tongue was not made to
20 role my Rs. I apologize for all the names I will mispronounce
21 during this trial.

22 Mr. Serra was responsible for Horizon's entire Puerto
23 Rico operation. He didn't have a secret e-mail account. He
24 didn't have a code name. But you will hear him admit that he
25 was involved in the conspiracy.

1 For most of the conspiracy, Frank Peake was the
2 president of Sea Star, and he was Peter Baci's boss. He
3 didn't start working at Sea Star until after the conspiracy
4 started. And like Gabriel Serra, he didn't have a secret
5 e-mail account or a code name. That was Peter Baci's role.
6 That didn't stop Frank Peake from playing a key role after he
7 became Peter Baci's boss. Frank Peake used his position as
8 president to step in and keep the conspiracy on track, to keep
9 it working.

10 Basically, you will hear when the kids, Peter Baci
11 and Greg Glover, couldn't play nicely, they ran to the
12 parents, Frank Peake and Gabriel Serra. Frank Peake and Gabe
13 Serra were the big bosses. They left the day-to-day details
14 to their own employees. If the conspiracy was working, they
15 let Peter Baci and Greg Glova run it. That is what bosses do.
16 You will hear if it wasn't broken, they didn't fix it.
17 You will hear that they sat back and let Peter Baci and Greg
18 Glova raise prices to customers like Office Max and Burger
19 King. But if something was broken, the boss fixed it. And
20 you will hear this directly from one of the bosses himself,
21 Gabriel Serra.

22 Gabe Serra will tell you that he and Frank Peake
23 worked together to fix things in the conspiracy to get their
24 employees, Peter Baci and Greg Glova, back on track, back to
25 playing nicely. Sometimes it would take all of them sitting

1 down together to work it out. If that is what it took, that
2 is what they did.

3 You will hear how Frank Peake was so effective in
4 keeping the conspiracy together. He worked at Horizon for a
5 number of years before being employed by Sea Star. They were
6 old friends. They worked together. That helped them to work
7 things out. Frank Peake was the president of Sea Star, and he
8 was Peter Baci's boss. He could have put a stop to the
9 conspiracy at any time, but he didn't. Instead, you will see
10 and hear how he and Gabriel Serra worked together to make the
11 conspiracy a success.

12 How did they do it? Let me give you some examples
13 that you are going to see and hear at trial. One example will
14 show how Frank Peake and Gabe Serra would get involved if one
15 company accidentally took business from another company. In
16 this e-mail, which is called out, the bottom of the e-mail,
17 Frank Peake sends an e-mail to Gabriel Serra. You will hear
18 that he was complaining, because Sea Star lost some bids to
19 Horizon, including the Burger King account, which is
20 referenced as BK.

21 Gabriel Serra in the next e-mail up responds to Frank
22 Peake's e-mail. He writes, not sure communication
23 availability is working as well as it used to. You will hear
24 that what they are referring to is the pricing communications
25 between Peter Baci and Greg Glova.

1 In response to this e-mail by Mr. Serra, Frank Peake
2 sends another e-mail. And in his e-mail Mr. Peake writes,
3 agree that things aren't working as well as they were. Pete
4 has similar complaints. You heard that Pete is Peter Baci,
5 and that Frank Peake is referring to the pricing
6 communications that Peter Baci was having with Greg Glova.
7 You will hear that this e-mail shows how Frank Peake and
8 Gabriel Serra would get involved to keep things working, to
9 keep things on track, to keep competition from breaking out
10 between companies.

11 In fact, the evidence will show that is what happened
12 here. When Greg Glova learned that Sea Star was upset about
13 Horizon having taken that Burger King business, he used his
14 secret e-mail account to e-mail Peter Baci just a few days
15 after Frank Peake complained to Gabriel Serra. The subject of
16 Mr. Glova's e-mail is Caribbean restaurants, and he is writing
17 to Lighthouse123, who is Peter Baci at Sea Star. And then in
18 the second part he writes, we really didn't realize that you
19 handled any of the refr (sic), and I apologize for not
20 checking. Refr is the term for refrigerated cargo.
21 You will hear it is some of the most valued cargo. It is more
22 expensive. They can charge higher rates.

23 Mr. Glover writes, if you lose your 75 refr loads, I
24 will have to make it up to you somewhere else. What does that
25 sentence mean? Horizon accidentally won business from Sea

1 Star. Then Horizon would agree to let Sea Star win business
2 back from Horizon. The witness will tell you that is the way
3 the conspiracy worked, and they did that to keep competition
4 from breaking out between them, so that they could keep
5 getting higher prices.

6 Another example of Frank Peake and Gabriel Serra
7 working together is Sea Star and Horizon picking and choosing
8 which customers they want. You will see in here that Frank
9 Peake reminded Gabriel Serra to keep Horizon's prices above
10 Sea Star's so that Sea Star would win the business from an
11 important customer. In this e-mail, Frank Peake writes to
12 Gabriel Serra. Horizon may have a visitor from NW, no
13 mistakes. This was referring to a big Sea Star customer
14 called Transconex from the pacific northwest. He didn't want
15 Horizon to accidentally win Transconex' business.

16 In response, you will see that Gabe Serra writes,
17 don't worry. To which you will see that Frank Peake again
18 responds, I don't want it to be close. Which you will hear
19 meant that Horizon's price was not supposed to be close to Sea
20 Star's. Gabriel Serra you will see responds to Frank Peake,
21 you have doubt we will hold the line. To which you will see
22 Frank Peake responds, no doubts. Just making sure.

23 You will hear this is how Gabriel Serra and Frank
24 Peake tried to stay on the same page. This is just like you
25 saw with the Office Max, except this time Sea Star was

1 supposed to win the business from this customer. And there
2 are times when things don't go the way they are supposed to.
3 And when the communications don't work as they expect, you
4 will hear in those times Gabriel Serra and Frank Peake would
5 try to work things out.

6 You will see other documents that show Frank Peake's
7 role in the conspiracy. It won't be as many documents as
8 there are between Peter Baci and Greg Glova. That is because
9 Frank Peake and Gabriel Serra only got involved when they
10 needed to, when there were problems that needed to be solved,
11 like in the earlier e-mails that you saw.

12 You will also hear that most of the time things ran
13 smoothly. But the documents will show, when needed, that
14 Frank Peake got involved and did what he needed to do to keep
15 the conspiracy working. You will also hear that Frank Peake
16 participated in meetings that had no other purpose but to fix
17 prices.

18 For example, you will hear that Frank Peake and Peter
19 Baci traveled to Orlando in 2006 to meet with Gabriel Serra
20 and Greg Glova of Horizon. In that meeting, they all
21 discussed the plan to increase the rates to virtually all Sea
22 Star and Horizon customers in 2007. You will see that rate
23 increase in writing. And you will also see in here that they
24 talked about specific customer accounts where there had been
25 mistakes or miscommunications. You will hear that they did

1 | this so that they could make sure that everything was on
2 | track. The conspiracy was still working, so that they could
3 | keep on charging higher price.

4 | Why did Frank Peake do it? Why did Sea Star and
5 | Frank Peake get out of this conspiracy? There will be
6 | evidence that Sea Star almost lost money in the conspiracy or
7 | record losses in the conspiracy. And Frank Peake received
8 | large bonuses that were based in part on the profits of the
9 | company. Basically, you will hear the illegal conspiracy made
10 | more money for Sea Star. It made more money for Frank Peake.

11 | By the end of the trial, you will have evidence from
12 | Greg Glova and Gabriel Serra and Peter Baci that all point
13 | directly to Frank Peake, and proves his participation in the
14 | conspiracy.

15 | Now, you will also hear that each of those three men
16 | pled guilty to their role in this conspiracy, and they went to
17 | jail for it. They are not role models, but they were involved
18 | in the conspiracy. And they know what happened, and they are
19 | going to tell you about it. But you won't need to rely on
20 | their testimony alone. You will also see documentary evidence
21 | also written during the conspiracy, e-mails that were sent to
22 | Frank Peake where they described his conduct at the time as it
23 | was actually happening before anyone thought they were going
24 | to get caught, when they all still trusted each other.

25 | That evidence was not supposed to see the light of

1 day, that evidence that the conspirators ran through secret
2 e-mail accounts. Peter Baci tried to destroy that evidence
3 when he found out that the illegal scheme had been discovered.
4 He didn't know that the FBI already had that evidence. And
5 you are going to see some of that evidence during trial.
6 And that evidence, as well as all the other evidence
7 introduced in trial, will show beyond a reasonable doubt that
8 Frank Peake was part of a widespread conspiracy and fixed the
9 rates on freight shipped to and from Puerto Rico. That he was
10 a participant and a problem solver for the conspiracy. That
11 he allowed his employees to participate. And as a problem
12 solver for the conspiracy, he worked to make the conspiracy a
13 success. And that he is guilty of price fixing.

14 Thank you.

15 THE COURT: Mr. Markus or Ms. Moss?

16 MS. MOSS: Yes, Your Honor.

17 OPENING STATEMENT

18 MS. MOSS: Get everyone. Get everyone. Those are
19 the words that are ringing in Bill Stallings' ears. Those
20 words, get everyone, are echoing in his head. Bill Stallings
21 is trying to think that this day -- that this is just like any
22 other day. This is a normal day. But deep down Bill
23 Stallings noticed that this day is different. This is a day
24 that my life depends on.

25 Bill Stallings is trying to look on the outside like

1 everything is the same. He is hoping that he appears that
2 nothing has changed about him, but there is something very
3 different about Bill Stallings on this day, because on this
4 day Bill Stallings is wearing a wire. He is wearing a tape
5 recorder, and he is wearing a video camera, because what all
6 the people around him don't know, what all the people at Sea
7 Star Lines don't know is that the week before, Bill Stallings
8 was sitting down across the table from an FBI agent who said
9 to him, get everyone, everyone on tape at Sea Star Lines that
10 has anything to do with this conspiracy. Get every single
11 person at Sea Star Lines that is involved in this price fixing
12 scheme.

13 So even though Bill Stallings was nervous that day,
14 he had the wire on and his heart was racing. He wore the wire
15 because he knew the alternative, because Bill Stallings had
16 committed this crime, too. Bill Stallings had committed
17 fraud. For years Bill Stallings knew, and he had
18 participated. And Bill Stallings didn't want to go to prison,
19 so Bill Stallings wore that wire, and he taped everyone
20 involved in the conspiracy.

21 He wore that wire all day that day; and he wore it
22 the next day; and he wore it the day after that; and he wore
23 it the week after that; and he wore it the week after that.
24 For almost two months Bill Stallings wore this tape recorder,
25 had this video camera, and taped everyone at Sea Star Lines

1 that was involved in this price fixing conspiracy. And at the
2 end of those two months, he took those tapes to the FBI, and
3 he said, I did it. I got everybody.

4 And the FBI took those tapes and -- imagine that,
5 they were like kids on Christmas day. They couldn't get to
6 the computer fast enough to hear what was on those tapes.
7 What did they hear on those tapes? They listened to multiple
8 recordings on those tapes of Peter Baci talking about a price
9 fixing conspiracy. They listened to multiple recordings of
10 Alex Chisholm talking about the price fixing, people talking
11 about the price fixing conspiracy. Everybody involved at Sea
12 Star Lines, involved in the price fixing conspiracy, Bill
13 Stallings got them all.

14 The FBI said to Bill Stallings, you did a great job.
15 Such a great job, you got everybody. So we are not going to
16 charge you. We are not going to bring charges against you.
17 You are not going to prison. We are going to set you free.
18 You get to go home, because you got everybody.

19 Frank Peake is not on any of those tapes. Frank
20 Peake was not involved in this conspiracy. Bill Stallings
21 didn't record Frank Peake. He is not on one single tape of
22 two months of recordings that Bill Stallings made. Frank
23 Peake is not on those tapes, because Frank Peake is innocent.
24 And that is why Frank Peake has chosen to come before this
25 Court and chosen to come here before you, because he is saying

1 loud and clear, I am not guilty. I am not guilty.

2 This case is about insiders and outsiders, people who
3 cheat and people who compete. And Frank Peake was an
4 outsider. In fact, in 2002, when this conspiracy started,
5 Frank Peake was 5,000 miles away in Alaska, all the way on the
6 other side of the world. In 2002, when this conspiracy
7 started, Frank Peake wasn't even working at Sea Star Lines,
8 didn't have anything to do with the freight line trade.

9 By the time Frank Peake started working at Sea Star
10 Lines over a year later in July of 2003, the insiders in this
11 case had already decided that only a small number of people
12 can know what we are doing, can know about the crime that we
13 are committing, especially not Frank Peake, not the new guy,
14 not the outsider, not the straight shooter.

15 Let me tell you about Frank Peake and what the
16 insiders knew about Frank Peake. I would like Frank Peake to
17 stand up. This is Frank Peake. Frank Peake is the very
18 definition of honesty, of integrity, of decency. Over and
19 over and over again people have said, Frank Peake is one of
20 the best men I have met. He is one of the best men you will
21 meet. He is married to his highschool sweetheart. He has
22 three beautiful children who are so sorry they can't join us
23 for most of his trial. His wife is at home in New Jersey
24 taking care of his three children.

25 He is the son of a police officer. He was a Marine.

1 His mother was a stay-at-home mom. Parents who didn't
2 graduate from high school, but wanted their son to become
3 educated, wanted their son to do better. And so Frank Peake
4 worked hard. He worked harder and harder and harder all his
5 life so that he came from almost nothing to becoming a
6 president of a shipping company. That is who Frank Peake is.
7 He is a man who is incredibly competitive, incredibly
8 competitive, down to his core. And who the insiders know
9 would never agree to not compete with his rivals.

10 Let me tell you about these insiders, these cheaters.
11 The prosecutor showed you pictures of Peter Baci, Gabriel
12 Serra, Greg Glova. There are other people, Shapiro, Alex
13 Chisholm. These are the people who got together in 2002,
14 behind closed doors, so that no one would know what they were
15 about to do, about the crime they were about to commit, about
16 their secret location, their secret meeting. And they sat
17 around the table all together and they agreed. They agreed to
18 fix prices. They agreed to split up customers. They agreed
19 to raise rates. They agreed to work together.

20 These people who were supposed to be competitors,
21 they were supposed to be rivals, instead they agreed. And
22 they didn't just agree to do it. They carried out this
23 conspiracy for years. From 2002, 2003, 2004, all the way up
24 to 2008, they carried out this conspiracy. And there is no
25 question what all of these people were doing.

1 Let me tell you how they were doing it. These people
2 were acting like spies, like secret agents, like they were
3 agents. They were using these throw away phones, the kind of
4 phones that have a certain number of minutes attached to it,
5 that can't be traced or billed, so the outsiders wouldn't know
6 what they were doing. Frank Peake didn't have a throw away
7 phone. Frank Peake didn't have a disposable phone.

8 They were using secret e-mails. These are secret
9 e-mail accounts that they opened up outside their company
10 server, where they used code names, and they used secret
11 passwords so they could pass information back and forth
12 between each other. There is no question what they were
13 doing.

14 And you saw in the prosecutor's opening a chart.
15 They were referred to as secret communications between Sea
16 Star Lines and Horizon Lines regarding price fixing. It is
17 misleading. These were not secret communications between Sea
18 Star Lines and Horizon Lines. You are not going to see an
19 e-mail between a Horizon Line server. These were not e-mails
20 between two companies. These were e-mails between two
21 insiders, between Peter Baci and Greg Glova; between Kevin
22 Gill and Peter Baci. These were secret e-mails. And you saw
23 some of the secret e-mails. You saw how they communicated
24 with each other.

25 And, again, you see Anne Clark. This is not a person

1 at Horizon. Anne Clark is not a person that works at Horizon.
2 This is the secret name for Greg Glova. And he is writing to
3 Lighthouse123, because this is the secret name for Peter Baci.
4 And you see the way they write to each other. These people
5 are blatantly deceiving their companies. They are shamelessly
6 lying to their customers. Look at the way they write to each
7 other. If you continue to stay clear, I am confident they
8 will agree to our last offer.

9 Greg Glova is saying, I want this customer. We've
10 agreed that this is going to be my customer, and this is what
11 I am going to bid on this customer, 2,561 dollars plus all
12 these other charges. So you need to stay a couple of hundred
13 dollars away.

14 These are just a couple of e-mails. They didn't just
15 send a couple of these e-mails. They didn't just send them
16 once in a while, once a week. They sent them day after day
17 after day, multiple times a day, hundreds of times a month,
18 thousands of times a year, tens of thousands of times over the
19 lifetime of this conspiracy. This is the depth of their
20 communication. This is the volume of these secret e-mails.
21 This is the detail of their crime.

22 Frank Peake didn't have a secret e-mail account.
23 Frank Peake didn't send any of these secret e-mails. Frank
24 Peake is not in any of these secret e-mails, because Frank
25 Peake was not involved.

1 What else did these insiders do? We are going to
2 hear that some of these insiders had, just in case, they had
3 an insurance policy. You will hear people like Kevin Gill.
4 He hung onto stuff. He hung onto stuff, because he said from
5 the very beginning, he said, if I go down, I am not going down
6 alone. I am taking people with me. So he hung onto notes, he
7 hung onto e-mails, and he hung onto documents. Frank Peake is
8 not in any of those documents. Frank Peake is not in any of
9 those e-mails.

10 Peter Baci. Peter Baci had a just in case. You will
11 hear that Peter Baci kept an almost daily log of this
12 conspiracy, a diary of this conspiracy, the details of this
13 conspiracy. He wrote in notebooks like this where he kept
14 track of the conspiracy, and he wrote in his notebooks for
15 years. He had almost 30 notebooks full of information about
16 the conspiracy, about what customers they were discussing,
17 about what the bids were going to be on the customers, about
18 who was involved and who did what.

19 You didn't see any notebooks from the prosecutor's
20 opening statement. You didn't see the notebook after notebook
21 after notebook, but it is there. You know what? There is
22 nothing about Frank Peake in those notebooks.

23 Ladies and gentlemen, thank goodness we have these
24 notebooks. Thank goodness we have all these 10s of thousands
25 of e-mails. Thank goodness that we have Bill Stallings'

1 | tapes, because this is the evidence of this conspiracy. This
2 | is what this conspiracy looks like. This shows you how they
3 | communicated, how they did what they did, and most
4 | importantly, who was involved. It wasn't Frank Peake.

5 | In 2008, when these insiders got caught, they knew
6 | that this mountain of evidence was out there. They knew they
7 | were caught red-handed. They knew their fingerprints were on
8 | this. They knew they couldn't fight their cases. They
9 | couldn't come here for trial. So they were thinking, I don't
10 | want to go to prison for 10 years, because that is what a
11 | person is facing who is convicted of this crime.

12 | They didn't want to do 10 years. They didn't want to
13 | do nine years. They didn't want to do eight years. They
14 | didn't want to do five years. They kept thinking what they
15 | could do to make a deal with the government. I have to make a
16 | deal. And how do I make the best deal possible? How do you
17 | get the lowest amount of time possible?

18 | And in this case they had to point the finger at
19 | someone who was not involved. They pointed the finger at
20 | Frank Peake, because that was the way out of this mess,
21 | because they knew that Peter Baci couldn't say that Greg Glova
22 | was involved. So they made this story about Frank Peake, a
23 | story that you will hear is a lie. They lied, because that is
24 | what cheaters do. These people lied. For years they lied to
25 | companies. They lied to their coworkers. They lied to their

1 families. They lied and deceived people who trusted them
2 most. You will even hear that they lied to these prosecutors
3 and they lied to the FBI.

4 When Gabriel Serra sat down with the evidence and
5 they told him, tell us about this price fixing scheme, he
6 said, I don't know what you are talking about. I don't know
7 about a price fixing scheme.

8 Peter Baci. You will hear that Peter Baci, when he
9 went before the Judge to be sentenced, because he was guilty,
10 you are going to hear that he had extra time on his sentence
11 for what is called obstruction, because he lied. And even the
12 people -- the prosecutor said, he lies. He can't be trusted.
13 He changes his story over and over. These are who these
14 insiders are.

15 So I have no doubt that they will parade themselves
16 one by one before you today to make these accusations against
17 Frank Peake, to claim that he attended these so-called
18 conspiracy meetings. But you have to ask yourself, where is
19 the proof? Because they don't have to pass through some lie
20 detector machine before they get up on the stand and testify.
21 They don't have to take some test that makes sure that they
22 are telling the truth before they get up on the stand to
23 testify. They are not presumed to be truthful. You are the
24 ones to determine whether they are being truthful. These
25 people who have lied over and over and over.

1 And I will tell you that Frank Peake -- did Frank
2 Peake meet with people from Horizon Lines? Yes, out in the
3 open. He put it on his expense reports. He put it on his
4 calendar. He had legitimate reasons to meet with them. He
5 and Gabriel Serra had been friends for years. There is
6 nothing illegal about meeting.

7 There is nothing illegal about meeting. But there is
8 not one shred of physical evidence, other than the word of
9 these snitches, to say that the meetings that Frank Peake
10 attended had anything to do with a conspiracy. And the
11 prosecutor, again, showed to you a slide during the opening
12 statement, a slide that they labeled, a conspiracy meeting.
13 This Orlando meeting. And they think and they are hoping that
14 because they put Frank Peake's picture on this slide, that
15 that means this is evidence. That it happened, that he
16 attended a so-called conspiracy meeting. But I want you to
17 look at this document that's placed here.

18 This is a conspiracy document. And I want you to
19 weigh it during trial, when you see this e-mail. It was sent
20 in an e-mail between Peter Baci and Greg Glova. That
21 document, that e-mail never went to Frank Peake, because Frank
22 Peake didn't attend conspiracy meetings.

23 And the prosecutor has talked to you about e-mails
24 that went back and forth between Mr. Peake and Mr. Serra. Let
25 me tell you, those are not secret e-mails. Those were not

1 secret e-mails. Those are e-mails that Frank Peake wrote out
2 in the open from his Sea Star e-mail address. And the
3 prosecutor and the FBI had those e-mails since 2008. For five
4 years they have had those e-mails. Because one thing the
5 prosecutor didn't tell you is that after the FBI found out
6 about this conspiracy in 2008, you remember Bill Stallings,
7 after the FBI found out about the conspiracy, they went and
8 raided Sea Star Lines and they went and raided Horizon Lines.
9 They took every computer and every document and every
10 personnel record and every file and every calendar, and they
11 looked in every file cabinet drawer, in every desk drawer, in
12 every closet they examined. They examined all these e-mails.
13 They analyzed all these documents. They looked under every
14 rock and behind every tree.

15 And they had these e-mails in 2008. They didn't
16 arrest Frank Peake in 2008. They didn't arrest him in 2009.
17 They didn't arrest him in 2010. They didn't arrest Frank
18 Peake until the end of 2011, when all these insiders had pled
19 guilty.

20 Instead, he had to wait for the insiders to spin
21 these e-mails into something they weren't. These are about 10
22 e-mails that Frank Peake looked at. You will get a chance to
23 see these e-mails and to see that they don't mean what these
24 people say they mean. These are competitive e-mails. These
25 are e-mails of Frank Peake beating his chest up against

1 Gabriel Serra like two men on a basketball court, saying,
2 better not mess with me. You better stay away from my
3 customers. If you attack me, I am going to come down on you
4 even harder. That is what these e-mails are. You saw an
5 example of this.

6 These are not conspiracy e-mails. You know how we
7 know that? The prosecutor showed you this e-mail in their
8 opening. Gabe knows these are not conspiracy e-mails. They
9 are talking about a customer they are fighting over. They
10 both wanted to get this business.

11 Frank, writing to Gabriel Serra, writes, I don't want
12 it to even be close. Don't bother to come near me. Gabriel
13 Serra responds, do you have to doubt we will hold the line?
14 How do we know that this is not a conspiracy e-mail? Two
15 reasons. Because up at the top, after Frank has sent his
16 chest bumping e-mail and Gabe sends it back to him, Frank
17 Peake sends this e-mail to his coworker, Kevin Gill. What
18 does this say? BS. Big time BS. Look at how Frank is so
19 full of it. Look at how Frank talks. And Gabriel Serra says,
20 I just gave it right back to him. I just BSed him right back.

21 MR. SNYDER: Your Honor, I am going to object at this
22 point to the characterization of the e-mails.

23 MS. MOSS: Your Honor, the government did exactly the
24 same thing. He interpreted them.

25 THE COURT: The jury will determine the

1 | characterization of the e-mails.

2 | MS. MOSS: And you will interpret the
3 | characterization. Refresh your recollection. It is all in
4 | the tone. BS.

5 | What is the second way that we know that this is not
6 | a conspiracy e-mail? Because this next sentence that Gabriel
7 | Serra said: Do you have to doubt that we will hold the line?
8 | Yeah, I will stay away from them. Gabriel Serra steals that
9 | customer. He takes that business. That's how you know Frank
10 | Peake -- there was no agreement. There was no conspiracy.
11 | Frank Peake was not involved.

12 | When Frank Peake went to work at Sea Star in July of
13 | 2003, you will see that everything that he does while he is at
14 | Sea Star Lines is because he wants to compete. You have to
15 | know Frank. He is a visionary. He is a strategist. He likes
16 | to think of the big picture. He is the opposite of a micro
17 | manager. He doesn't get involved in the day-to-day. Frank is
18 | involved in the future, about taking Sea Star Lines and making
19 | it a great company for the future.

20 | You will see all the great things Frank Peake does
21 | while he is at Sea Star Lines. Things like spending \$15
22 | million renovating and rebuilding the terminal in San Juan,
23 | the terminal right across the bay, because he wants to make
24 | the most modern, the most beautiful terminal in all the
25 | Caribbean. And he does. You don't spend \$15 million on a

1 terminal if there is an agreement with a competitor. He spent
2 millions of dollars building more containers. You don't spend
3 millions of dollars building containers if you think there is
4 a conspiracy --

5 THE COURT: May we have counsel approach? All.

6 (Bench conference held.)

7 THE COURT: Ms. Moss, this sounds like a final
8 argument.

9 MR. SNYDER: I restrained myself.

10 THE COURT: And not an opening statement.

11 MS. MOSS: I am almost done.

12 THE COURT: This is supposed to be an outline of what
13 you are going to prove.

14 MR. MARKUS: We didn't object when the government
15 went into depriving children from school luncheon programs.

16 MR. SNYDER: Someone from the USDA will testify as to
17 that.

18 MS. MOSS: I am almost done.

19 MR. MARKUS: Your Honor, I would like to renew our
20 motion to object to Mr. Snyder's opening. I just want to
21 preserve the objection. I didn't want to interrupt his
22 opening statement.

23 THE COURT: It is preserved.

24 (Bench conference concluded.)

25 THE COURT: Ms. Moss, you may continue.

1 MS. MOSS: Thank you, Your Honor.

2 You will also hear evidence that while Frank Peake
3 was at Sea Star Line, he spent millions of dollars to bring in
4 a technology system, to bring a faster system for his
5 customers. The evidence will show that they wanted to bring
6 in more customers, give more reasons for customers to come to
7 Sea Star. And he spent \$10 million to bring in their ship,
8 because when Frank Peake started Sea Star Lines, there were
9 only two ships.

10 You saw the shipping routes on the slide before,
11 Jacksonville, Florida to San Juan, Puerto Rico; from the
12 northeast to Houston. They didn't have ships that sailed
13 from the northeast to Houston, so what Frank Peake had to do
14 was he had to buy space on those Horizon ships. And Frank
15 hated so much having to buy space from Horizon and having to
16 depend on Horizon, he spent \$10 million to bring in this ship.
17 These are all the things, there are so many more that Frank
18 did because he wanted to compete.

19 You are going to hear about \$73 million. \$73 million
20 that he invested in capital while he was at Sea Star Lines.
21 You don't invest \$73 million in capital if you were trying to
22 get a bonus and make the most out of it. It is all that money
23 invested in capital that is taken from the company's bottom
24 line and out of their pocket. Frank Peake was not about the
25 money and not about the greed. Frank Peake was about

1 competing.

2 Now, before I sit down, I just want to tell you one
3 more thing. I started out my opening statement telling you
4 about Bill Stallings, whom the prosecutor never mentioned.
5 Bill Stallings. And those words ringing throughout his head,
6 get everyone. That is how this case started for the FBI.

7 Let me tell you how this case ended for the FBI.
8 Early one morning on April 17th of 2008, the FBI goes to the
9 home of Greg early in the morning, at 6:00 in the morning
10 before anyone knows what's going on, and they say to Greg
11 Glova, the jig is up. We know you were involved in this
12 conspiracy. We know all about it. So you have two choices.
13 You can either help us or you can go to prison for a very long
14 time.

15 Greg Glova says, I am going to help you. And the FBI
16 says, we want you to get everyone. We want you to make phone
17 calls to everybody that was involved in this price fixing
18 scheme. And Greg Glova couldn't grab the phone fast enough.
19 And he called people from Horizon, and he called people from
20 Sea Star Lines, and he called people from this other company,
21 Crowley Liner. He called every single person that was
22 involved in this conspiracy. He didn't call Frank Peake. He
23 didn't even mention Frank Peake's name, because Frank Peake
24 was not involved. That's why we are here today, because Frank
25 Peake is not guilty.

1 Thank you.

2 THE COURT: Okay. We will recess 10 minutes, and
3 then we will begin with the first witness. Ten minute recess
4 for the jury at this time.

5 THE DEPUTY MARSHAL: All rise.

6 (Whereupon, a recess was taken.)

7 (Excerpt concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 54 pages is
5 a true and accurate transcription to the best of my ability of
6 the excerpt of proceedings in this case before the Honorable
7 United States District Court Judge Daniel R. Dominguez on
8 January 14, 2013, which were recorded in court
9 stenographically by Yvette Richardson.

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14 S/ Amy Walker

15 Amy Walker, CSR 3799

16 Official Court Reporter

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